

**FILED**

**MAY 14 2019**

Clerk, U.S. District Court  
District Of Montana  
Missoula

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

**WAYNE DALE KELLBERG,**

**Plaintiff,**

**vs.**

**RICKY SHELBOURNE,**

**Defendant.**

**CV 19-50-M-DLC-JCL**

**ORDER**

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on March 27, 2019, recommending that the Court deny Plaintiff Wayne Dale Kellberg's motion for leave to proceed in forma pauperis. (Doc. 3.) Kellberg failed to timely object to the Findings and Recommendation, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 3), the Court

finds no clear error in Judge Lynch's recommendation that Kellberg's application be denied. As discussed in the Findings and Recommendation, Kellberg's complaint is frivolous, fails to state a claim upon which relief may be granted, and is barred by res judicata.

Accordingly, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendation (Doc. 3) is ADOPTED IN FULL;

(2) Kellberg's motion for leave to proceed in forma pauperis is DENIED.

DATED this 15<sup>th</sup> day of May, 2019.



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Dana L. Christensen, Chief Judge  
United States District Court